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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,556	12/29/2003	Mitchell L. Gelber	16513-0001	9122
28529	7590	05/15/2006		
GALLAGHER & KENNEDY, P. A. 2575 E. CAMELBACK RD. #1100 PHOENIX, AZ 85016				
			EXAMINER AGARWAL, MANUJ	
			ART UNIT 3764	PAPER NUMBER

DATE MAILED: 05/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/748,556

Applicant(s)

GELBER ET AL.

Examiner

Manuj Agarwal

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/2/04</u>  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to because element 34, as described in the specification, is not shown. Furthermore, reference numeral 31, as seen in fig. 5 has no description.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction

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of the following is required: A flexible layer interior of the flexible material, the padding layer at the at least one vibratory motor, as set forth in claim 9, is not disclosed.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 9 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. A flexible layer interior of the flexible material, the padding layer at the at least one vibratory motor is not disclosed in the specification.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2,9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 2, it is unclear how the present invention allows for three dimensional vibratory movement. It is not clear how the vibratory move in three planes, namely the x, y, and z planes. If the vibrators are affixed to a surface, it seems unlikely that they can perform such movements.

Regarding claim 9, it is unclear how the flexible layer can be located interior the at least one vibratory motor.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,6,10,16,17 are rejected under 35 U.S.C. 102(b) as being anticipated by Duboff et al. (US 6,748,604).

Regarding claims 1,2, Duboff et al. discloses a massage glove that is inherently flexible having at least on layer of flexible material with interior and exterior as well as multiple fingers, at least one vibratory motor 21 affixed to the glove interior and on the palm side of the glove (fig. 3), a first source of electrical power 40 electrically connected to the glove interior with the at least on vibratory motors by electrical leads that run along the glove (fig 3). The at least one vibratory motor has multidirectional movement when energized, for it will move in alternating directions. Furthermore, the at least one vibratory motor is capable of three dimensional movement when energized, for it can move in all three dimensional planes, similar to the disclosed invention.

Regarding claim 6, fig 3 shows that each finger of the glove has a vibratory motor 21 affixed therein.

Regarding claim 10, the power source 40 comprises a battery with a switch 44 for controlling the vibration intensity of the at least one vibrator. The switch is inherently

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capable of being adjusted to provide a minimal intensity of zero, and thus disconnecting the battery from the motors (col. 3 lns 16-22).

Regarding claims 16,17, see above rejection of claim 1. The vibratory motors 21 serve as a plurality of electrically operable means for vibrating and are secured within the glove at the palm side. All devices that are supplied current are part of a circuit. When the switch is closed, current is supplied to the plurality of means for vibrating through a circuit network.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3,4,11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duboff et al. (US 6,748,604) in view of Gross (US 2004/0087881).

Regarding claim 3, Duboff et al. discloses the claimed invention except for a electrically powered heater. Gross discloses a massage glove having a leather at least one layer of flexible material forming a glove with interior and exterior as well as multiple fingers, at least one vibratory motor affixed to the glove interior (fig. 1), a first source of electrical power electrically connected to the glove interior with the at least on vibratory motors by electrical leads that run along the glove (paragraph 4). The at least one vibratory motor has multidirectional movement when energized, for it will move in alternating direction. The massage glove further comprises an electrically powered

heater connected to the supply of electrical power by electrical leads running along the glove to an electrical power source (fig. 2, paragraph 6). It would have been obvious to one of ordinary skill at the time the invention was made to provide an electrically powered heater to the massage glove of Duboff et al, as taught by Gross in order to provide heat therapy to the user's hand.

Regarding claim 4, Duboff et al. discloses the claimed invention except for the electrically powered heater being supplied by a second source of power. The heater of Gross is supplied by a second power source (paragraph 6). It would have been obvious to one of ordinary skill at the time the invention was made to provide an alternative source of power to the heater, as taught by Gross in order to provide a means to separately adjust the intensity of the heat applied to the user's hand.

Regarding claim 11, Duboff et al. discloses the claimed invention except for a switchable current path and a reducing element. The switch of Gross allows for the selection of a "high" or "low" setting to the vibrators (paragraph 6). In order to provide this low setting, a resistor, or a reducing circuit element must be present to reduce the current delivered to the vibrators in order to reduce the amount of effective vibration. Furthermore, the presence of a high setting implies that an unimpeded path of current flow must also be present in order for the vibrators to vibrate at a higher level than when at the low level.

Regarding claim 12, following the logic above, the switch must be a single pole double throw (SPDT). The power that enters the switch will come from a single wire that originates at the power source. This power can then travel to either one of two wires

that leave the switch—namely the wire with the resistor when switched to a low setting, or to the wire without the resistor when switched to a high setting.

Regarding claim 13, see the above rejections of claims 1 and 3. The massage glove of Duboff et al comprises a plurality of vibratory motors.

Regarding claim 14, see above rejection of claim 4.

Regarding claim 15, see rejection of claim 1.

Claim 5,7,18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duboff et al.

Regarding claim 5, the vibratory motors 21 of Duboff et al. must be small enough to fit atop and massage only the distal portion of the finger after its last joint—distal interphalangeal. Thus, the motors must be of a similar size to that of the claimed dimension. Furthermore, it would have been an obvious matter of design choice to provide vibratory motors of .15 inches in diameter, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claims 7,18, Gross in view of Duboff et al. lacks a plurality of vibrators affixed in each finger of the massage glove. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide additional vibratory motors, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.



Regarding claim 19, see above rejection of claim 3.

Claims 8,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duboff et al, or alternatively, Duboff et al in view of Ertl (US 4,559,646).

Regarding claim 8, Duboff et al. discloses the claimed invention except for a padding layer intermediate the at least one vibratory motor and the layer of flexible material. It is quite common in the art of gloves and mittens to dispose padding or cushioning between the outer and inner layers for a variety of purposes. During the winter months, such padding or cushioning serves as insulation. Such padding is commonplace in gloves used during sporting activities as well. The examiner takes official notice that is common in the art to dispose a padding layer between the outer and inner layer of a glove. Such an arrangement would inherently place the padding intermediate the at least one vibrator and either layer of the flexible material.

One example of the abundance of art of this nature is the Ertl reference. Ertl discloses a glove that comprises a foam pad disposed between the lining and the shell of the glove (col. 1 Ins. 35-38). It would have been obvious to incorporate padding into the massage glove of Duboff et al. as is taught by the abundance of art, as well as Ertl for the added comfort and safety would protect a massage recipient from harmful or unpleasant engagements.

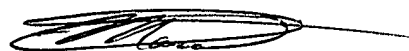
Regarding claim 9, the layer of flexible leather material of Duboff et al. would inherently comprise a flexible layer interior to itself. The foam padding layer of Ertl comprises a flexible layer as well. The vibratory motor is affixed to the leather flexible glove at its center.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuj Agarwal whose telephone number is (571) 272-4368. The examiner can normally be reached on Mon to Fri 9:00 AM 5:30 PM.

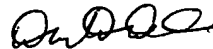
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Manuj Agarwal  
Patent Examiner

MA



Danton D. DeMille  
Primary Examiner